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July 26, 2022

Via ECF

Honorable Lorna G. Schofield, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Stephen Gannon v. 124 East 40th Street LLC*
Civ. A. No. 1:22-cv-361-LGS

Dear Judge Schofield:

As you know, we represent Defendant 124 East 40th Street LLC (“Defendant”) in the above-referenced matter. We write to address the purported “Joint Status Letter” filed last night by Plaintiff’s counsel.

By way of background, pursuant to the Civil Case Management Plan and Scheduling Order entered by the Court on May 24, 2022 (Docket No. 46), the parties were to submit a Joint Status Letter as detailed in Individual Rule IV.A.2. After again not having heard from Plaintiff’s counsel, our office initiated contact yesterday advising that, despite the deadline having arrived, we had not received a proposed draft letter and requested that one be provided without further delay.

Several hours later, counsel forwarded a proposed draft letter that was misleading and inaccurate. Immediately following a court appearance, we responded with proposed redline edits that corrected certain inaccuracies and revised the letter to conform with Your Honor’s Individual Rule. Counsel then responded at 7:20 p.m. when we were out of the office, and at 10:50 p.m.

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Honorable Lorna G. Schofield, U.S.D.J.

July 26, 2022

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submitted the “Joint Status Letter” without our consent and approval. A copy of the email communications between counsel is annexed hereto for reference.

For the sake of brevity, we respectfully refer Your Honor to the letter filed by Plaintiff last night. Addressing the substance of the letter, Defendant’s discovery requests were served by electronic and regular mail, as Federal Rule of Civil Procedure 5 requires. Similarly, on July 20, 2022, Defendant served its responses to Plaintiff’s Request to Admit, Request for Production and Interrogatories via regular mail. Counsel’s letter to the Court was the first time the issue of non-receipt was raised by Plaintiff, and we will today re-serve by regular mail with a courtesy copy sent by electronic mail.

With regard to Plaintiff’s commentary about his failure to properly serve discovery in accord with Federal Rule of Civil Procedure 5(b)(2), we reject the assertion that Defendant “seek[s] to avoid responding to discovery served in the normal course...” Plaintiff’s counsel impermissibly served three sets of discovery requests in a single PDF file by email while the primary attorney handling the file was on paternity leave. Notwithstanding Plaintiff’s admitted violation of the Federal Rules, we nevertheless responded to the discovery demands and requests for admission. As further evidence of Plaintiff’s bad faith, rather than meet and confer with the undersigned regarding the purportedly “missing” responses, he raised the issue for the first time in his unilateral, “joint” submission and by way of the contemporaneous issuance of an extortionist settlement demand.

As to counsel’s opinion that the discovery deadlines should be extended, Defendant sees no basis to do so. All discovery demands issued to Defendant have been responded to, and we anticipate that discovery will continue in due course. A further extension of the pendency of this matter will only prejudice Defendant, which will be forced to continue litigating a frivolous matter for a longer period of time.

We are available to address this, or any other matter, at the Court’s convenience.

Respectfully submitted,

s/ Joshua S. Bauchner
Joshua S. Bauchner, Esq.

cc: Adam D. Ford, Esq. (via ECF)

Seth M. Rosenstein

From: Adam Ford <adam.ford@fordhufflaw.com>
Sent: Monday, July 25, 2022 7:20 PM
To: Seth M. Rosenstein
Cc: Josh Bauchner; John McLay
Subject: RE: [EXT] Re: Gannon v. 124 East 40th Street, LLC
Attachments: 2022.07.25 22cv361 Joint Status Update Letter - v3.docx

This email has been deemed safe, but always exercise caution when opening any attachments.

Round 3 attached.

If you have any changes or edits, please just make them right in the document and I'll run a redline comparison. Please do not use track changes.

Thanks,
Adam

Adam Ford
Ford & Huff LC
Phone: 212.287.5913
Email: adam.ford@fordhufflaw.com

Sent via [Superhuman](#)

On Mon, Jul 25, 2022 at 2:45 PM, Seth M. Rosenstein <smr@ansellgrimm.com> wrote:

Adam:

My apologies for the delay in responding; I have been before the court in another matter this afternoon. The proposed joint letter with our redlines is attached.

Best,

Seth

Seth M. Rosenstein

Ansell Grimm & Aaron, P.C.

(973) 247-9000

From: Adam Ford <adam.ford@fordhufflaw.com>
Sent: Monday, July 25, 2022 2:54 PM
To: Seth M. Rosenstein <smr@ansellgrimm.com>
Cc: Josh Bauchner <jb@ansellgrimm.com>; John McLay <john.mclay@fordhufflaw.com>
Subject: [EXT] Re: Gannon v. 124 East 40th Street, LLC

This email has been deemed safe, but always exercise caution when opening any attachments.

Seth,

Please see attached. With your approval we will get on file this afternoon.

Best regards,

Adam

Adam Ford
Ford & Huff LC
Phone: 212.287.5913
Email: adam.ford@fordhufflaw.com

Sent via [Superhuman](#)

On Mon, Jul 25, 2022 at 12:10 PM, Seth M. Rosenstein <smr@ansellgrimm.com> wrote:

Counsel:

The May 24, 2022 CMP and Scheduling Order requires the parties to submit a joint status letter in accord with Individual Rule IV.A.2. As you know, the onus is on plaintiff's counsel to prepare a draft letter for defendant counsel's

consideration. Despite the deadline being today, we have not received a proposed draft letter. Please forward a proposed draft letter without delay.

Regards,

Seth

Seth M. Rosenstein

Ansell Grimm & Aaron, P.C.

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